
(1993) 10 SC CK 0036
In the Supreme Court Of India
Case No : Criminal Appeal No. 604 of 1982

Dev Raj and another

APPELLANT

Vs

State of Himachal Pradesh

RESPONDENT

Date of Decision : 07-10-1993

Acts Referred:

Penal Code, 1860 (IPC) — Section 300, 302, 304, 307, 323

Citation : AIR 1994 SC 523 : (1994) 2 SCC 552 Supp

Hon'ble Judges : N.Venkatachala, J;K. Jayachandra Reddy, J

Bench : Division Bench

Final Decision : Partly Allowed

Judgement

1. Heard learned Counsel for the parties.

2. On 29-3-1979 at village Dhakawa, in the district of Hamirpura, an occurrence took place during the course of which Ram Chand and Pritam Chand received fatal injuries and PW 23 - Romesh Chand also received some injuries. During the same occurrence, two of the accused persons, viz., Dev Raj and Des Raj also received injuries. In relation to this incident, four accused were tried for offences punishable under Sections 302, 307, 452/34 Indian Penal Code. The trial Court convicted all of them under Sections 452, I.P.C. and sentenced each of them to undergo R.I. for three years. Dev Raj was convicted u/s 302, I.P.C. for causing the death of Ram Chand and also under Sections 302/34, I.P.C. for the murder of Pritam Chand and under Sections 307/34 for attempting to commit the murder of Romesh Chand (PW-23) and sentenced to undergo imprisonment for life and to suffer R.I. for five years and sentences were directed to run concurrently. Likewise, Des Raj was convicted u/s 302, I.P.C. for causing the murder of Pritam Chand and under Sections 302/34 for causing the death of Ram Chand under Sections 307/34 for attempting to commit the murder of Romesh Chand (PW-23) and sentenced to undergo imprisonment for life and also to undergo R.I. for five years. Ram Chand and Hem Raj the two other accused were also convicted under Sections 302/34, I.P.C. and under Sections 307/34, I.P.C. for the same offence

and sentenced to undergo imprisonment for life and also to undergo R.I. for three years. All the four convicted accused preferred an appeal to the High Court and the High Court confirmed the convictions of Dev Raj and Des Raj under Sections 302, I.P.C. and sentenced them to undergo imprisonment for life thereunder. Dev Raj's conviction u/s 307, I.P.C. was upheld and sentence was also upheld. Likewise, their convictions under Sections 452, I.P.C. was converted into one u/s 451 and sentence was reduced to six months' R.I. The High Court, however, acquitted Hem Raj and Ram Chand of the murder charge as well as under Sections 307/34, I.P.C. but confirmed the convictions under Sections, 451, I.P.C. and reduced the sentence to the period already undergone.

3. The present appeal is filed by Dev Raj and Des Raj. It is represented that Des Raj died in the mean time, therefore, the appeal against him abates.

4. The prosecution case is as follows:

Pandity Ram (PW-3) was in possession of two canals of lands. He allowed his brother-in-law Ram Chand - the deceased to set up a saw mill over there. The machines erected by Ram Chand were covered by a temporary shed. Ram Chand - accused disputed the right of Pandity Ram (PW-3) over the land which resulted in civil and criminal proceedings. PW-3 had two sons. Pritam Chand - the deceased and Romesh Chand (PW-23) used to work in the saw mill. On 28-3-79, Ram Chand - the deceased made an application to the Forest Officer and he reported that Des Raj and the accused Ram Chand had been illicitly felling the chill trees. The Forest Officer checked the saw mill of Dhian Singh and 20 logs were reported to be of Des Raj at that mill. Then, he checked the other mills. There he met PW-23 and 86 logs were found lying at Srola Nallah. He gave the necessary direction to both the mills and the mill owners were directed not to release the logs belonging to the accused. In the evening, Romesh Chand (PW-23) went to the mill of Ram Chand. His brothers Pritam Chand and Ram Chand were present there. Bakshi Ram - an employee was also present there. At 8-9 p.m., they were sitting by the Chulla. The mill had electricity. Bulbs inside and outside of the mill were burning at that time. Ram Chand - accused along with his three sons viz., other accused came there. They started abusing Ram Chand deceased for giving information against them to the Divisional Forest Officer. At that stage, Dev Raj and Des Raj picked up iron pipes lying there, while the other two accused picked up wooden phattis, all of them attacked Ram Chand, Pritam Chand and Romesh Chand. Dev Raj and Des Raj were stated to have hit Ram Chand and Pritam Chand on the head with their respective iron pipes. Dev Raj hit Romesh Chand on the head with his pipe. The other two accused were alleged to have entered the gate and started giving phatti blows. The incident lasted for about 15-20 minutes. All the three injured persons fell down. The accused left the place leaving behind iron pipes and wooden phattis. Soon after the occurrence, PW (sic) Suresh Kumar arrived at the mill and he informed PW-3, who came to the mill and found both his sons as well as his brother-in-law lying injured on the floor. He was apprised of the incident by

Bakshi Ram (PW-1).

The injured persons were shifted to the nearest hospital which was a primary health center. The doctor (PW-14) who examined the injured found injury on the scalp and other lacerated wounds on the deceased Ram Chand as well as Pritam Chand. Likewise, he found some injuries also on PW-23. The injured were referred to the civil hospital, Hamirpura. Thereafter Ram Chand was transferred to PGI, Chandigarh since his condition became grave and ultimately he died at 12 noon on 3-4-79 - the very next day of his admission in the hospital. The doctor (PW-14) also examined Dev Raj and Des Raj between 9-9.30 a.m. on 30.3.79. On Dev Raj, doctor found incised wound in occipitoparietal region in the shape 8 cm x 1 cm and bruise on the right shoulder and also some bruise on the left thigh. The doctor opined that all the injuries were simple. On Des Raj, doctor found incised wounds in occipitoparietal region and anteroposteriorly elliptical 10 cm from right mastoid process and also some other simple injuries. The police was informed and the case was registered. After inquest, the two dead bodies were sent for post mortem. The doctor who conducted the post mortem on the dead body on Pritam Chand - on internal examination found that the death was caused due to Neurogenic shock and cardio respiratory failure due to injury to brain and due to internal haemorrhage in the left lung. On the dead body of Ram Chand, he found lacerated (stitched) wound on the right side of scalp. Some abrasions were also found. An anteroposterior fracture starting from middle of supra-orbital margin extended upwards and backwards and slightly medially to reach a point 3 cm from middle line and 5 cm above right parietal eminence. He also found a fracture on the parietal region and bone was found depressed. The doctor opined that the injuries were sufficient in the ordinary course of nature to cause death.

5. After completion of the investigation, a charge-sheet was laid and the accused were arrested. The prosecution mainly relied on PW-1 and PW-23-the injured witnesses.

6. When examined u/s 313, Cr.P.C. Ram Chand and Hem Raj denied their presence at the scene of occurrence. Dev Raj and Des Raj pleaded that they were attacked by the complainant party and they acted in the self-defence. The learned Sessions Judge as stated above, held that all the four accused had the common intention and accordingly, caused the death of the two persons and also injuries to PW-1 and PW 23 and accordingly convicted them.

7. The High Court, however, after consideration of the entire evidence and the pleas of the accused held that the accused had no right of self-defence and convicted Dev Raj and Des Raj for their individual acts for causing the death of Ram Chand and Pritam Chand and for causing injuries to Romesh Chand, PW 23 for offence punishable u/s 307/34, I.P.C. So far as Ram Chand and Hem Raj are concerned, the High Court convicted them for the offence punishable u/s 323, I.P.C. and acquitted them of the major charges. Conviction of Dev Raj and Des Raj u/s 302, I.P.C. was upheld by the High Court.

8. Learned Counsel for the appellants submits that the prosecution has failed to explain the injuries on the two accused persons and as a matter of fact, later a medical board was constituted, and the doctor found on the body of Des Raj accused that there was fracture on the postero lateral aspect of the left forearm with scab off 1" above the lower ulnar prominence transverse in direction 2.5 cm x 1 cm and 6" below the elbow joint 1 cm x 1/2cm - among other wounds. His further submission is the failure on the part of the prosecution to explain the injuries on the accused would go to show that they suppressed the genesis of the occurrence and the right of private defence to these two accused cannot be denied. It is also his further submission that the accused need not prove their defence like the prosecution and it is enough if by preponderance of probabilities and on the basis of the circumstances they can show that they had such a right, then, they should be given the benefit of doubt.

9. As already mentioned, we are concerned only with Dev Raj now. Dev Raj as well as Des Raj undoubtedly received injuries during the same occurrence and when they have taken the plea that they acted in self-defence, that cannot be lightly ignored particularly in the absence of any explanation of their injuries by the prosecution. It is not necessary to refer to various decisions where it has been held that the accused if acted on self-defence, need not prove beyond all reasonable doubt and if two views are possible, the accused should be given the benefit of doubt. Having regard to the nature of the injuries on the two accused persons, we find it difficult to hold that their pleas altogether are unfounded. Then the next question would be whether they had exceeded the right of self-defence. Admittedly, the occurrence is said to have taken place in a sudden manner. Even, according to the prosecution, they did not come there armed. A quarrel ensued there and they picked up iron pipes and wooden patties that were lying there and a clash took place. In such a situation, their plea of right of private defence has to be accepted, but having regard to the injuries inflicted by them on the two deceased persons as well as on PW-23, they have definitely exceeded the right of private defence and the accused are entitled to the benefit of Exception 2 of Section 300 and the offence punishable is one u/s 304, Part 1, I.P.C. . Accordingly, conviction of Dev Raj u/s 302, I.P.C. and the sentence of imprisonment for life awarded thereunder are set aside and, instead, he is convicted u/s 304 Part I, I.P.C. and sentenced to R. I. for seven years. His conviction u/s 307, I.P.C. and the sentence of five years R.I., are, however, confirmed. The sentences are to run concurrently . His conviction u/s 451, I.P.C. and the sentence of six months' R.I. and fine on default clause, if any, are confirmed. Sentences to run concurrently. Dev Raj shall surrender and serve out the remaining sentence. In the result, the appeal abates so far as Des Raj is concerned and allowed partly so far as Dev Raj is concerned to the extent indicated above.